***HON'BLE SRI JUSTICE P.S. NARAYANA**

+WRIT PETITION No.14855 of 2006

%10-11-2006

Y.V.S Reddy, S/O.Venkat Reddy,
R/o.6-120, Jaggaiahpeta village & Mandal, Krishna District.

…….... PETITIONER

Versus

$The Government of Andhra Pradesh, rep. by its Secretary, Panchayat Raj Department, Secretariat Buildings, Hyderabad & others.

……...
RESPONDENTS

< GIST:

> HEAD NOTE:

!Counsel for Petitioner**: Smt N.Shoba.**

^Counsel for Respondents**:AGP for Prohibition and Excise.**

? Cases referred

2003(1) SCC 726

THE HON'BLE MR JUSTICE P.S.NARAYANA

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Date 10-11-2006

Between:
Y.V.S.Reddy.

..... PETITIONER

AND

The Government of A.P. rep. by its Secretary, Panchayat Raj Department, Secretariat Buildings, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No.14855 of 2006

ORDER:

The matter is appearing under interlocutory. This Court issued Rule Nisi on 20-07-2006, and interim stay was granted for a limited period, which is being extended from time to time and ultimately, extended until further orders on 11-08-2006.

Counter affidavit is filed by the third respondent. In view of the same, both the counsel made a request for disposal of the writ petition itself finally.

Sri Y.V.S.Reddy, the writ petitioner, filed the writ petition seeking a Writ of Mandamus declaring the action of the first respondent in Memo No.5730/Pt 2/Pts.III/A3/2006-4, dated 01-07-2006 rejecting the appeal/petition of the petitioner and confirming the orders of the District Level Committee in Roc.No.3935/2002-Pts.7, dated 07-11-2005, as arbitrary and illegal and consequently direct the respondents to grant second year lease period for quarrying sand in Kanneveedu Reach of Krishna District.

Smt N.Shoba, learned counsel representing the writ petitioner, had taken this Court through the contents of the affidavit filed in support of the writ petition and the stand taken in the counter affidavit, and further pointed out to the impugned order and would maintain that the ground specified in the impugned order that the present action of the Government to fetch some more revenue

cannot be a sustainable ground. Learned counsel also places strong reliance on the decision of the Apex Court in **Beg Raj Singh v. State of U.P**.[1].

Learned Assistant Government Pleader for Panchayat Raj, on the contrary, had taken this Court through the averments made in the counter affidavit in detail and would submit that the ground of fetching more revenue alone is not the ground and apart from it there are several contraventions, violations and complaints as against the writ petitioner and in view of the same, the impugned order made is in accordance with law and the same need not be interfered with.

Heard the counsel.

At the outset, it may be appropriate to have a glance at the operative portion of the impugned order in Memo No.5730/Pt 2/Pts.III/A3/2006-4, dated 01-07-2006, which reads as under:

> "Hearing was held on 19-05-2006. The District Panchayat Officer, Krishna District and the petitioner and his counsel attended the hearing. Arguments were made by both the parties. The District Panchayat Officer explained the facts of the case in chronological order.
>
> Government after careful examination of the matter with reference to the report sent by the District Panchayat Officer, Krishna, the contents of the appeal petition, the arguments and submission made by the petitioner during the hearing and keeping in view the larger interests of the local body in earning revenue, hereby reject the request of the contractor for grant of lease for the 2nd year with 10% enhancement and vacate the stay granted in the reference 5th cited."

It is averred in the affidavit filed in support of the writ petition that pursuant to the notification issued by the second respondent in proceedings No.3407/2000, P.1, dated

13-09-2000, sand quarrying in Krishna District, the petitioner

participated in the auction held on 29-09-2000 for Kanneveedu Reach of Vatsavai Mandal and that the Reach was notified for Rs.5,00,000/- as the minimum bid in terms and conditions of the tenders. It is further stated that the petitioner deposited Rs.1,25,000/- as 25% of the minimum bid in the auction held on 29-09-2000 and he was declared as the highest bidder for Rs.12,25,000/-, and before the petitioner could deposit the remaining amount, the Division Bench of this Court in W.A.No.1015 of 2000 made an order to maintain status quo and on receipt of the telegraphic order, the petitioner was informed that all further proceedings are stayed. It is also further stated that the writ appeal was allowed permitting the leasee to operate from February, 2001 and directed the Government to dispose of the pending revision. The Government in G.O.Ms.No.988, Panchayat Raj and Rural Development Department, dated 10-07-2001, dismissed the revision petition that the lease period expired, and further held that the petitioner was the highest bidder in the auction sale and lease was knocked down in favour of the petitioner for Rs.12,25,000/- only. It is also stated that the petitioner was asked to pay the balance amount of Rs.12,25,000/- for entering into agreement, and the entire amount including the security deposit was deposited and the lease deed was executed and registered on 08-03-2002 for a period of two years. The District Panchayat Officer, in proceedings No.4310/1, dated 08-03-2002, issued the sanction orders for a period of one year from 09-03-2002 to 08-03-2003 for the first year lease period. It is also further stated that the petitioner was operating the quarry without any complaints and in view of the common order passed by this Court in W.P.No.18359 of 2002, quarrying operations were stopped. However, the petitioner deposited Rs.13,74,000/- for granting of lease for the second year on 23-01-2003, but the same was returned on the ground that the

common orders were made by this Court in W.P.No.18359 of 2002 not to permit quarry operations of sand all over the state except the perennial rivers Krishna, Godavari and Penna. It is further stated that the amount deposited was returned as renewal cannot be granted in view of the stay orders. Subsequently, the writ petition was disposed of on 16-02-2002 directing the concerned authorities to grant lease wherever there is no ground water depletion. It is also further stated that report was furnished by the Assistant Director of Mines and Geology, Deputy Director of Mines and Geology, Ground Water Department, Assistant Geologist after a joint survey of the Kanneveedu reach. Hence the petitioner filed an application before the District Level Committee on 29-09-2005 along with D.D.Nos.938429 and 366243, dated 27-07-2005 and 28-07-2005, requesting to grant the second year lease period as the stay orders are vacated. It is further stated that in similarly situated other areas, leases were extended for the second year period, however, the case of the petitioner was not considered. As the representation of the petitioner was not considered, the petitioner filed W.P.No.26144 of 2005 and it was represented by respondents that the representation was rejected by the District Level Committee on 07-11-2005 asking to collect D.Ds. and on receipt of the same, the petitioner preferred an appeal to the Government on 30-12-2002. It is further stated that as no action was taken, the petitioner filed W.P.No.2850 of 2006, wherein this Court disposed of the writ petition directing the first respondent to consider and dispose of the representation within a period of eight weeks. While that being so, the District Level Committee had issued notification in Rc.No.2743/2005 pts.7, dated 19-04-2006, notifying the public auction on 05-05-2005 with a condition that the area be put to auction subject to the outcome of the order in Appeal Petition by the Government as per the directions in

W.P.No.2850 of 2006, dated 17-02-2006. It is further stated that the petitioner filed W.P.No.9548 of 2006 questioning the auction notification and this Court, by order dated 02-05-2006, directed the authorities not to grant lease of sand quarry to anybody for Kannevedu Reach, and the Government by telegram dated 04-05-2006 stayed the auction. It is further stated that on coming to know of the notification, the petitioner submitted a representation on 26-04-2006 to stay the auction scheduled to be held on 05-05-2006. It is further averred in para 7 of the affidavit filed in support of the writ petition that the Government fixed the hearing on 19-05-2006 and the same was heard on 19-05-2006, and in Memo No.5730/Pt 2/Pts.III/A3/2006-4, dated 01-07-2006, an order was made in one line that keeping in view the larger interest of the local body in earning revenue, the request of the contractor is rejected and the stay granted is vacated. It is stated that the order of the Government is arbitrary, illegal, unjust and is in violation of principles of natural justice and that the respondents had not passed any speaking order except stating that the local body earns more revenue. The decision of the Apex Court in **Beg Raj Singh**'s case (1 supra) and also the order made by the Division Bench in W.A.No.415 of 2006 had been referred to.

In the counter affidavit filed, conducting of public auction and the petitioner becoming the highest bidder and this Court in W.A.No.1055 of 2000 directing to maintain status quo of the auction conducted on 29-09-2000, are admitted. It is further stated that this Court had disposed of W.A.No.1055 of 2005 with a direction to the Government to dispose of the revision petition and the Government passed orders in G.O.Rt.No.988, Panchayat Raj and Rural Department (Pts.III) dated 10-07-2001, dismissing the revision petition with a direction to the District Collector, Krishna, to take

further action in the matter and, hence, the petitioner was issued notice to pay the balance of the highest bid amount of Rs.12,25,000/- and to enter into agreement as per rules to obtain work orders in respect of Kanneveedu sand reach. It is further stated that the petitioner had executed the agreement deed dated
08-03-2002 for a period of two years and the work orders were issued to the petitioner for a period of one year with effect form 09-03-2002 and the lease period expired by 08-03-2003, and that the petitioner paid the lease amount for the second year, as per rules, 45 days before expiry of the lease period and requested for extension of his lease rights for the second year. However, specific stand was taken in para 4 of the counter affidavit that many complaints were received as against the petitioner with regard to using of proclainers as against the rules and regulations and indulging in irregular, and illegal quarrying of sand without proper way bills. Further, it was specified that the writ petitioner was mining the sand without 500 mts. distance to the water schemes, projects, borewells etc. and the notices issued to him also had been referred to and the common directions issued in W.P.No.18359 of 2002, dated 16-02-2004, also had been referred to. It is also stated that the petitioner aggrieved by the decision of the District Level (sand) committee, Krishna, filed a revision petition before the Government on 30-12-2005 and the Government in Memo No.5730/Pt.2/Pts.III/A3/2006-4, dated 01-07-2006, Panchayat Raj and Rural Development, Andhra Pradesh, Hyderabad, had rejected the revision petition of the petitioner in view of the larger interest of the local bodies. It is also stated that the District Level (sand) Committee, Krishna, decided for conduct of public auction to the sand reach of Kanneveedu as it fetches more than 2 crores and as per the way bills, the income derived by the petitioner comes to Rs.1,62,00,000/-. It is further stated that there

would be a major loss to the State exchequer if the reach is leased for the second year to the petitioner and, therefore, the District Level (sand) Committee had fixed the upset price of Rs.1,65,00,000/- and issued notification on 19-04-2006 for conduct of public auction. It is stated that the petitioner wants to take away the sand reach with the least amount of Rs.13,47,500/- to gain crores of rupees and had adopted illegal methods in transporting the sand and, therefore, several complaints are made against the petitioner. It is also stated that the Government rejected the revision petition of the petitioner through Memo

No.5730/Pt 2/Pts.III/A3/2006-4, dated 01-07-2006, Panchayat Raj and Rural Development, Andhra Pradesh, Hyderabad keeping in view of heavy loss to the State finances. It is also stated that the Deputy Director, Ground water, Vijayawada, had stated in the joint inspection report dated 27-02-2006 that the sand mining could be done in the area shown in the location map (Plate-I) and that the sand mining shall be allowed within 15 meters or 1/5 of the width of the stream bed from the bank whichever is more and that the mining shall be allowed to a depth of one meter even at the places of the reach where the deposition of sand is uneven. Further, it is submitted that the Munneru had floods recently in the month of June and July, 2006, due to which the sand deposits have increased to an abnormal thickness. Further, several allegations are made in para 7 of the counter affidavit also to substantiate the stand that all is not well with the petitioner. It is further stated that after narrating all factual details, the District Level Committee issued notification on 19-04-2006 to conduct auction of Kanneveedu reach of Vatsavai Mandal by fixing an upset price of Rs.1,65,00,000/-, and in pursuance of the said notification, five persons had filed their bids by depositing Rs.41,25,000/- towards Earnest Money Deposit and if the auction is

conducted, it would fetch more than two crores. It is also stated that the second year lease period expired by 08-03-2004. Moreover, there are so many allegations against the petitioner when he was operating sand reach during the first year lease period and in the report of the District Panchayat Officer, dated 10-04-2006; joint inspection report dated 19-12-2002, and Mandal Revenue Officer's report dated 15-02-2003, everything had been explained. Specific stand is taken that in the event of the writ petition being allowed, there would be huge loss to the State Exchequer.

On a perusal of the impugned order and also the material papers produced before this Court, the stand taken by the respondents is that apart from the ground of fetching more revenue as specified in the impugned order, there has been several complaints as against the writ petitioner and that

is the reason why the case of the petitioner was not considered. Consideration of similar cases favourably also had been made a ground of attack by the writ petitioner and the counsel had pointed out several such instances where such cases had been favourably considered. The relevant portion of the impugned order already had

been referred to supra. Though, in the counter affidavit, certain other allegations also had been made apart from the ground on which the rejection was made in the impugned order, such allegations need no serious consideration since these are not the grounds on which the order of rejection was made as can be well reflected from the impugned order. It is no doubt true that the loss to the public exchequer also have to be taken into consideration, but, equally, it is also to be seen that the State is under an obligation to keep up its promise and also the terms and conditions which had been agreed upon. Balance may have to be maintained in between. When similar cases had been favourably considered, rejection of the case of the petitioner, in the considered opinion of this Court, may not be just and proper, especially on the ground of fetching some revenue by not extending the period as originally agreed upon. The State would be deriving some additional benefit by itself may not be a sufficient ground always. The Apex Court, in fact, while dealing with similar question in **Beg Raj Singh**'s case (1 supra) observed thus:

> "The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portals of the court. A petitioner, though entitled to relief in law, may yet be denied relief inequity because of subsequent or intervening events i.e. the events between the commencement of litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change of law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighing inequities pitted against equities on the date of judgment. Third-party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events

> happening in-between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi-judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief, the court would as an ordinary rule try to place the successful party in the same position in which he would have been if the wrong complained against would not have been done to him. The present one is such a case. The delay in final decision cannot, in any manner, be attributed to the petitioner. No auction has taken place. No third-party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with GO issue by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision." (emphasis supplied)

Hence on a careful analysis of the respective stands taken by the parties in the affidavit and counter affidavit referred to supra and also on a perusal of the impugned order and the other material placed before this Court, this Court is satisfied both on the ground of discrimination and also in the light of the ratio specified supra as laid down by the Apex Court in **Beg Raj Singh**'s case (1 supra) this Court is of the considered opinion that the impugned order cannot be sustained and accordingly the writ petitioner is bound to succeed.

The Writ Petition is hereby allowed. No costs.

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10-11-2006

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[1] 2003(1) SCC 726